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IN THE

Supreme Court of the United States

October Term, 1974
No. 74-291

KATHERINE MARIE AANESTAD, as Administratrix of the Estate of RICHARD ERNEST SYKES, deceased,

Petitioner,

vs.

BEECH AIRCRAFT CORPORATION,

Respondent.

On Peition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

BRIEF FOR RESPONDENT IN OPPOSITION.

Opinions Below.

The opinions below are adequately set forth in Appendix A through Appendix C of the Petition. The opinions below are not reported.

Jurisdiction.

Petitioners state they seek to invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1241(1). This is error and they must have intended to rely on 28 U.S.C. § 1254(1).

Question Presented.

Whether a state may, consistent with the due process clause of the United States Constitution, refuse to exercise jurisdiction over a non-resident defendant in an action brought by non-resident parties in interest on a non-forum related cause of action.

Statute Involved.

California Code of Civil Procedure, Title 5, Chapter 1, Article 1:

> § 410.10. [Jurisdiction exercisable]. A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.

Statement of the Case.

This action arises out of the crash of a Beechcraft Baron aircraft, FAA Registration No. N9328Q, on or about January 22, 1972 near Las Cruces, New Mexico. Plaintiff's decedent, Richard Ernest Sykes, was fatally injured in the crash.

At the time of his death the decedent was a resident of New Mexico, and left surviving as his heirs his wife and two sons, all of whom are, and were, residents of New Mexico. The aircraft involved in the crash was virtually brand new, having been flown from Beech's manufacturing facility in Wichita, Kansas where it was manufactured to an aircraft dealer, Cutter Fiying Service, in Albuquerque, New Mexico and from there to the scene of the accident at Las Cruces, New Mexico. [Clk. Tr. p. 250, lines 20-24.]

Beech Aircraft Corporation ("Beech") is a Delaware corporation with its principal place of business in Wichita, Kansas. Beech is neither incorporated in, nor licensed to do business within, the State of California. Beech does not manufacture any aircraft or components of aircraft in the State of California, nor does it own any plants, manufacturing facilities or real property within the State of California. [Clk. Tr. pp. 44-45, lines 25-5.]

The decedent's surviving widow, Laro Rebecca Sykes, on March 21, 1972, instituted a wrongful death action

in the District Court of Dona Ana County, New Mexico, to recover wrongful death damages for the death of her husband in the aforesaid crash. In this New Mexico action the decedent's wife sought recovery against Cutter Flying Service, the owner and operator of the aircraft at the time of the crash, and against the Estate of Stoes, the pilot of the aircraft, but not against defendant Beech. (Petition, App. B, p. 2.)

Apparently decedent's widow later determined to forum shop and split her wrongful death action, suing some of the defendants in New Mexico and suing Beech in California. In accordance with this plan, on or about January 18, 1973, a complaint was filed in the Superior Court of the State of California against defendant Beech. The plaintiff in the California action is Katherine Marie Aanestad, who sues as the personal representative of the heirs of Richard Ernest Sykes. Ms. Aanestad is a California resident and is employed as a secretary in the law office of counsel for plaintiffs. (Petition, App. B, pp. 2-3.) Beech was thereafter purportedly served with a copy of the complaint and summons by certified mail, addressed to it at its headquarters in Wichita, Kansas, and received by it on January 26, 1973.

The California complaint which is the subject of this Petition, like the New Mexico action, sought damages for the wrongful death of plaintiff's decedent, Richard Ernest Sykes. In the New Mexico suit the widow made no charge of any defects of design or manufacture of the aircraft but this became the basis of the California action. [Clk. Tr., pp. 1-10.]

On February 22, 1973 Beech filed a Petition and Bond for Removal Pursuant to 28 U.S.C. Section 1441 *et seq.*, and thereby removed this action to the United

States District Court for the Central District of California, where it was assigned to District Judge David W. Williams.

Against the background of the above factual record, *i.e.*, non-resident heirs and real parties in interest, a non-resident defendant and a crash which occurred in New Mexico, Beech, on March 27, 1973, filed a Motion to Dismiss Plaintiff's Complaint, alleging, *inter alia*, that under controlling California authorities the District Court lacked personal jurisdiction over defendant Beech in the within action.

Following notice of the motion plaintiff's attorneys initiated discovery against defendant Beech, which discovery included sending a set of interrogatories to Beech and taking the deposition of J. A. Elliott, a Vice President and Director of Beech. On July 9, 1973 Beech's Motion to Dismiss was orally argued before the Honorable David W. Williams; and on July 17, 1973 Judge Williams dismissed the complaint in a four page written Order.[1]

Plaintiff appealed to the United States Court of Appeals for the Ninth Circuit from the Order and Judgment of Dismissal of the District Court. On June 20, 1974 the United States Court of Appeals for the Ninth Circuit, in a Memorandum Decision by Circuit Judges Browning, Wright and Trask, affirmed the District Court's Order of Dismissal.[2] Plaintiff's Petition for a Rehearing was denied July 16, 1974, and this Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit followed.

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[1]The District Court's Order appears as Exhibit "A" to the Petition.

[2]The Court of Appeals Memorandum Opinion appears as Exhibit "B" to the Petition.

ARGUMENT.

Petitioner's Petition ignores the fact that it is not the purpose and function of a writ of certiorari to give the defeated party in the Court of Appeals another hearing. As is amply demonstrated *infra*, this case is not an appropriate case for the granting of a writ of certiorari under the guidelines set forth by this Court. Moreover, the decision below is in full accord with all of the Constitutional guidelines established by this Court with respect to in personam jurisdiction, and, in addition, rests on separate and adequate non-federal state grounds.

I.

The Petition Should Be Denied in That the Decisions Below Are Supported by Adequate and Independent State Grounds.

This action was filed in the California Superior Court on or about January 18, 1973, and thereafter removed to the United States District Court for the Central District of California. The grounds for removal were diversity of citizenship and an amount in excess of $10,000. It is the rule that in diversity actions the District Court's jurisdiction is derivative from that of the State Court in which the District Court sits and must be tested under the guidelines established by the state. *Freeman v. Bee Machine Co.*, 319 U.S. 448 (1943); *Arrowsmith v. United Press International*, 320 F.2d 219 (2d Cir. 1963); *Block v. Block*, 196 F.2d 930, 933 (7th Cir. 1952); *Electric Regulator Corp. v. Sterling Extruder Corp.*, 280 F.Supp. 550 (D. Conn. 1968).

The California statute relating to personal jurisdiction is California Code of Civil Procedure Section 410.10 which states:

> "A court of this state *may* exercise jurisdiction on any basis *not inconsistent* with the Constitution of *this state* or of the United States." Cal. Code of Civ. Proc. § 410.10. (Emphasis supplied.)

Since the statute does not require the exercise of jurisdiction by California in all cases where jurisdiction might arguably be permitted under the Constitution (the statute reads "may exercise" not "shall exercise"), it is necessary to review California jurisdictional decisions to determine its internal policy on the exercise of jurisdiction.

By its rulings, the California Supreme Court has made it abundantly clear that personal jurisdiction in California can be sustained only where the defendant has "contacts" with California and where, under the circumstances of the particular case, it is "reasonable" to assert jurisdiction, *e.g.*, *Buckeye Boiler Co. v. Superior Court*, 71 Cal.2d 893, 80 Cal.Rptr. 113 (1969); *Fisher Governor Co. v. Superior Court*, 53 Cal. 2d 222, 1 Cal.Rptr. 1 (1959); *L. D. Reeder Contractors of Ariz. v. Higgins Industries*, 265 F.2d 768 (9th Cir. 1959).

Although there are numerous factors which have caused California courts to decline jurisdiction, three factors present here require, under California law, a finding of no jurisdiction. They are:

(1) The accident which gave rise to this action occurred in the State of New Mexico and the cause of action asserted has absolutely no relation to any business purportedly carried on in California by anyone.

(2) The real parties in interest, the decedent's heirs, are non-residents of California, being residents of New Mexico, and as such have no more connection with California than the cause of action upon which they sue.

(3) Similar litigation has been instituted by said real parties in interest in New Mexico, the witnesses are located in New Mexico and other factors in general make suit in California "unfair" and "unreasonable".

In a number of cases both the California courts and the Ninth Circuit, applying California law, have consistently rejected attempts to expand California jurisdiction to disputes which do not have any connection with California.

In *Fisher Governor Co., supra,* for example, the party over whom jurisdiction was sought had regularly sold its products in California through intermediaries and was listed in the telephone book. The company also promoted the sale of its products through these intermediaries by the use of sales catalogs and a commission program. However, the injury giving rise to the suit had occurred elsewhere, as here, and the product in question, as here, had never been sold or used in California. The California Supreme Court, faced with these jurisdictional facts, noted that the;

> "[c]auses of action arose in Idaho, the defective equipment was not sold in this state, neither of the decedents was a California resident, and none of the plaintiffs are California residents." 53 Cal. 2d 222, 224; 1 Cal.Rptr. 1, 3.

Under such circumstances the California Supreme Court determined that it would not assert jurisdiction over the non-resident defendant indicating that to hold

otherwise would permit any corporation that promoted the sale of its goods on a nationwide basis to suit in California, and, indeed, anywhere in the United States, without regard to any other considerations. 53 Cal.2d 222, 225; 1 Cal.Rptr. 1, 3.

The petitioners attempt to argue that California's policy cannot pass federal constitutional muster in light of this Court's opinion in *Perkins v. Benquet Consolidated Mining Co.*, 342 U.S. 437 (1952). They are in error. Although *Perkins* presents a unique factual situation where the forum chosen was the only available forum, a factor not present here, this Court nonetheless noted that assumption of jurisdiction was not required under the federal Constitution and that the circumstances under which the courts of a state will assume jurisdiction is a question reserved for the state.

> "Consideration of the circumstances which, under the law of Ohio, ultimately will determine whether the courts of that State will choose to take jurisdiction over the corporation is reserved for the courts of that State. *Without reaching that issue of state policy,* we conclude that, under the circumstances above recited, it would not violate federal due process for Ohio either to *take or decline jurisdiction* of the corporation in this proceeding." 342 U.S. 437, 448. (Emphasis Supplied.)

In *Fisher Governor Co., supra,* the California Supreme Court expressed the policy of California with respect to the exercise of jurisdiction over non-resident defendants on non-forum related causes of action. The Ninth Circuit, in *L. D. Reeder Contractors of Ariz. v. Higgins Industries,* 265 F.2d 768, 773-774, properly expressed and applied California's policy and properly

stated the California rule. Accordingly, the writ should be denied because the decisions below are, as they must be, faithful to California law and because the California rule is consistent with the federal Constitution.

II.

The California Requirement That the Exercise of Jurisdiction Be "Reasonable" Under the Jurisdictional Facts of the Case Required a Finding of No Personal Jurisdiction Below; and, in Addition, This California Test Which Was Properly Applied Herein Is an Additional Adequate State Ground Supporting the Decision Below.

As noted previously under the prevailing California authorities two requirements must be satisfied to obtain in personam jurisdiction in California. The first requirement is that there be contact by the defendant with the forum state. The second requirement is that jurisdiction be "reasonable" under the jurisdictional facts of the case.

In the leading California case of *Buckeye Boiler Co. v. Superior Court,* 71 Cal.2d 893; 80 Cal.Rptr. 113 (1969), the California Supreme Court stated:

> "Once it is established that the defendant has engaged in activity of the requisite quality and nature in the forum state and that the cause of action is sufficiently connected with this activity, the propriety of an assumption of jurisdiction depends upon a balancing of the inconvenience to the defendant in having to defend itself in the forum state against both the interest of the plaintiff in suing locally and the interrelated interest of the state in assuming jurisdiction. (*McGee v. International Life Ins. Co., supra,* 355 U.S. 220,

223 [2 L.Ed.2d 223, 226]; *Fisher Governor Co. v. Superior Court, supra,* 53 Cal.2d 222, 225-226.) In other words, once the threshold of sufficient activity by the defendant has been passed, the question of the propriety of subjecting the defendant to the jurisdiction of the forum involves both a consideration of fairness to the plaintiff [citation omitted] and a determination of whether, from a standpoint of the logical and orderly distribution of interstate litigation, the forum state is what Professor Ehrenzweig has termed a 'forum conveniens' . . . See Ehrenzweig, *The Transient Rule of Personal Jurisdiction. The Power Myth and Forum Conveniens* (1956), 65 Yale L.J., 289, 312." 71 Cal.2d 893, 899; 80 Cal.Rptr. 113, 118.

The above quotation makes it clear that federal courts applying California law must weigh forum non conveniens factors when undertaking a jurisdictional analysis. This fact is made very clear by the opinion of the California Supreme Court in *Fisher Governor, supra,* which preceded *Buckeye Boiler. Fisher Governor* listed six forum non conveniens factors which must be balanced in any determination of the propriety of asserting personal jurisdiction. They are as follows:

"The interest of the state in providing a forum for its residents [citation omitted] or in regulating the business involved [citation omitted]; the relative availability of evidence and the burden of defense and prosecution in one place rather than another [citations omitted]; the ease of access to an alternative forum [citation omitted]; the avoidance of multiplicity of suits and conflicting ad-

judications [citation omitted]; and the extent to which the cause of action arose out of defendant's local activities [citations omitted]; are all relevant to this inquiry." 53 Cal.2d 222, 225-226; 1 Cal.Rptr. 1, 3.

In the instant case no California residents are involved, and thus California has no interest in providing a forum. Here, the business which forms the basis of the action was undertaken in Kansas and in New Mexico; California has no interest or ability to regulate the same. In addition, evidence is obviously more available in New Mexico, where the crash occurred and where the plaintiffs reside, and the burden on Beech of defending in California, a jurisdiction removed from the physical evidence, militate against jurisdiction in California. Each of these factors standing alone support a finding of no jurisdiction and in combination compel a conclusion that assertion of jurisdiction over Beech in California would be unreasonable.

There is nothing in the United States Constitution and its due process clause which compels California to exercise jurisdiction in a case such as this. As noted by this Court in *Perkins v. Benguet Consolidated Mining Co., supra*:

> "The suggestion that federal due process *compels* the State to open its courts to such a case has no substance. 'Provision for making foreign corporations subject to service in the State is a matter of legislative discretion, and a failure to provide for such service is not a denial of due process. Still less is it incumbent upon a State in furnishing such process to make the jurisdiction over the foreign corporation wide enough to in-

clude the adjudication of transitory actions not arising in the State.' "

Perkins v. Benguet Consolidated Mining Co., 342 U.S. 440, 441.

The courts below properly applied California law to this case and properly found that asserting jurisdiction over Beech in California on this New Mexico cause of action would be "unreasonable". California is patently inconvenient for the trial of this action. The California rule requiring analysis of forum non-conveniens factors in determining the reasonableness of in personam jurisdiction is not repugnant to the United States Constitution and is consistent with a state policy properly adopted by the California courts.

No federal question is presented by the petition and it should, therefore, be denied.

III.

Under Controlling California Authorities the Activities of Third Generation Subsidiaries of Beech in California Could Not Be Considered on the Issue of Whether Beech Was Doing Business in California and No Federal Question Is Presented by the California Rule; Accordingly, This Court's Writ Should Not Issue.

As a second argument in favor of the issuance of this Court's writ, petitioners attack the Ninth Circuit's determination that the activities of certain third and fourth generation subsidiaries of Beech in California could not, under controlling California authority, be considered the activities of Beech.

As previously noted, defendant Beech is a Delaware corporation with its principal place of business

in Wichita, Kansas. [Clk. Tr., p. 44, lines 25-27.] It is neither incorporated in nor licensed to do business within the State of California. It does not manufacture any aircraft or components of aircraft in the State of California, nor does it own any plants, manufacturing facilities or real property within the State of California. [Clk. Tr., pp. 44-45, lines 31-35.] Beech owns all of the stock of Beech Holdings, Inc., a Kansas corporation. Beech Holdings, Inc., in turn, owns all of the stock of Beechcraft West, a California corporation, which, in turn, operates three dealerships in California. [Clk. Tr., p. 45, lines 10-22.] However, neither Beech Holdings, Inc. nor Beechcraft West were in any way involved with the manufacture, sale or maintenance of the aircraft which crashed, and are not defendants in the action.

Recognizing that there is a dearth of activity of Beech in California, petitioners argued below that Beech is in fact doing business in California because its third generation subsidiary Beechcraft West sells, services and distributes Beech aircraft in California and is a California corporation and a wholly owned subsidiary of Beech Holdings, Inc., a Kansas corporation, which is, in turn, a wholly owned subsidiary of defendant Beech. (Petition, App. B, p. 4.)

Although petitioners seek to bootstrap this issue into one of constitutional magnitude, no federal question is presented. The controlling California cases are *Empire Steel Corp. v. Superior Court,* 56 Cal.2d 823, 17 Cal.Rptr. 150 (1961) and *Pope v. National Aero Finance Co.,* 220 Cal.App.2d 709, 33 Cal.Rptr. 889 (1963).

In *Empire Steel* the California Supreme Court made it clear that jurisdiction over the parent could be main-

tained where the parent was the *alter ego* of its California subsidiary, a fact not found below and not present here. The California Supreme Court also found that the non-resident parent had manipulated its California subsidiary to the detriment of its creditors and had caused it to remain in business and to make certain contracts at a time when the parent knew the subsidiary was, in fact, insolvent. It was because of these acts of the parent in California and not because of the mere presence of its subsidiary that the Court permitted the assertion of jurisdiction.

Similarly, the California District Court of Appeal, in *Pope,* predicated its jurisdiction over the non-resident parent, National Aero Finance Company, not because of any activities of its subsidiary in California but because of its own activities.

As the District Court of Appeal, in *Pope,* notes:

> "Among the other factors considered by the court [in *Empire Steel*] in concluding that the foreign corporation had engaged in activities creating substantial contacts in California *in relation to the claim asserted* were the following: Keeping the subsidiary in business beyond a period safe for persons dealing with the subsidiary; the residence of the president of the parent corporation in Caifornia; *the consequences within California of the activities of the parent corporation in the foreign state;* the occurrence of the alleged breach of contract, which was the subject of the pending action, in California; the fact that the contract was entered into and was to be performed in

> California; and *the manifest interest of California in providing a forum for local creditors injured by alleged frauds effected through a California subsidiary.* It is significant to note that, in *Empire Steel Corp.*, the Supreme Court does not consider continuous activity resulting in substantial contact as the necessary criterion for determining whether a foreign corporation is doing business in this state, but declares that '*the analysis of the activities of a foreign corporation should not be considered merely quantitatively, but in terms of their* "quality and nature", and their connection with *the obligations sued upon.*'" 220 Cal.App.2d 709, 718. (Emphasis supplied.)

Accordingly, the decision of the Court of Appeal was consonant with this Court's ruling in *Cannon Mfg. Co. v. Cudahy Packing Co.*, 267 U.S. 333 (1925), the decision of the California Supreme Court in *Empire Steel Co. v. Superior Court, supra,* and the decision of the California District Court of Appeal in *Pope v. National Aero Finance Co., supra.* The decision below is correct and no federal question is presented because California can, consistent with the due process clause of the Constitution of the United States, determine for itself the circumstances under which it will or will not consider the activities of a subsidiary to be those of the parent.

IV.

Conclusion.

This Court has stated that certiorari should not be granted to review decisions resting upon adequate and independent non-federal state grounds even in situations where the court below may have summoned to its support an erroneous view of federal law. *Radio Station WOW v. Johnson*, 326 U.S. 120, 129 (1944). It is clear that the court below properly applied controlling California authorities to the facts of this case in finding a lack of in personam jurisdiction over Beech. It is clear that the Constitution of the United State does not compel California to exercise jurisdiction in cases such as this. Whether California will or will not exercise jurisdiction is left for California to decide—the issue was properly decided in this case under controlling California decisions.

No federal question is presented by the petition and, therefore, it should be denied.

Dated: October 16, 1974.

Respectfully submitted,

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